

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

N. KALONJI OWUSU I  
A.K.A. NATHANIEL PORTER,

Plaintiff,

CIVIL ACTION NO. 09-13511

vs.

DISTRICT JUDGE THOMAS LUDINGTON  
MAGISTRATE JUDGE DONALD A. SCHEER

HARESH B. PANDYA, et.al.,

Defendants.

REPORT AND RECOMMENDATION CONCERNING PLAINTIFF'S MOTION FOR  
TEMPORARY RESTRAINING ORDER

This case comes before the Court on Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction filed on March 8, 2010 (Docket #23). For the reasons stated below, I recommend that the motion be denied.

Plaintiff, while incarcerated at the Michigan Reformatory Correctional Facility in Ionia, Michigan, filed the instant Complaint, pursuant to 42 U.S.C. § 1983, on September 4, 2009, alleging that the defendants had been deliberately indifferent to his serious medical needs. Specifically, Plaintiff asserts that he was denied adequate medical care for severe back pain. Claiming violations of his Eighth Amendment rights under the federal Constitution, Plaintiff sought injunctive relief as well as compensatory and punitive damages.

In the exercise of its discretion with respect to a motion for preliminary injunction, a district court must give consideration to four factors: "(1) whether the movant has a strong likelihood of success on the merits; (2) whether the movant would suffer irreparable injury without the injunction; (3) whether issuance of the injunction would cause substantial harm to others; and (4) whether the public interest would be served by issuance of the injunction." American Civil Liberties Union of Ky v. McCreary County, Ky., 354 F.3d 438, 445 (6<sup>th</sup> Cir. 2003)(quoting Rock and Roll Hall of Fame & Museum, Inc. v. Gentile Prods.,

134 F.3d 749, 753 (6th Cir.1998). Federal Rule of Civil Procedure 52(c) "requires a district court to make specific findings concerning each of these four factors, unless fewer are dispositive of the issue." See In re DeLorean Co., 755 F.2d 1223, 1228 (6th Cir. 1985).

In seeking an ex parte preliminary injunction, Plaintiff is essentially asking that this court rule on the merits of his Complaint. Moreover, Plaintiff has failed to provide specific facts from which the inference could be drawn that he is currently exposed to a substantial risk of serious harm beyond that normally to be expected in a prison setting. Plaintiff has made no showing that these defendants have drawn that inference and failed to take appropriate action. On the contrary, Defendants Stieve and Pandya, Plaintiff's treating physicians, have filed a Motion for Summary Judgment on March 23, 2010, declaring by affidavit that they were not deliberately or wantonly indifferent to Plaintiff's serious medical needs. They further maintain that they did not knowingly refuse to provide urgently needed medical care so as to cause residual injuries which could have been prevented with timely attention (See affidavits attached to Docket #27). It is apparent that Plaintiff has received regular clinical evaluations and medications to manage his medical condition, but that he is unsatisfied with the results of Defendants' treatment. Plaintiff has failed to demonstrate a likelihood of success on the merits of his claim, or that the relief requested would serve the public interest. For all the reasons stated, I recommend that Plaintiff's Motion for Temporary Restraining Order be denied.

Within fourteen (14) days of service of any objecting party's timely filed objections, the opposing party may file a response. The response shall address specifically, and in the same order raised, each issue contained within the objections.

s/Donald A. Scheer  
DONALD A. SCHEER  
UNITED STATES MAGISTRATE JUDGE

Dated: April 21, 2010

### **CERTIFICATE OF SERVICE**

I hereby certify on April 21, 2010 that I electronically filed the foregoing paper with the Clerk of the Court sending notification of such filing to all counsel registered electronically. I hereby certify that a copy of this paper was mailed to the following non-registered ECF participants on April 21, 2010: **NATHANIEL PORTER.**

s/Michael E. Lang  
Deputy Clerk to  
Magistrate Judge Donald A. Scheer  
(313) 234-5217